FOR ARGUMENT

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In the Supreme Court of the United States

OCTOBER TERM, 1991

ROBERT J. TAYLOR, TRUSTEE,
PETITIONER,
v.
FREELAND & KRONZ, A PARTNERSHIP;
WENDELL G. FREELAND; AND
RICHARD F. KRONZ,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

Brief of the Mon Valley Unemployed Committee, Lenie Tate, Robin Showalter, and Gloria and Thomas Peebles as Amici Curiae in Support of Respondents

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STATEMENT OF INTEREST OF AMICI

Amicus, the Mon Valley Unemployed Committee (MVUC) is an organization comprised of over 7,000 unemployed and underemployed workers throughout Western Pennsylvania. For the last decade, MVUC has been at the forefront in the effort to assist workers, primarily from the dying or retrenching smokestack industries, in dealing with the economic and social effects of the difficult economic times encountered by those industries in Western Pennsylvania. MVUC has counseled and otherwise assisted many workers who have sought to save their homes from mortgage foreclosure. In some cases MVUC urges that workers seek legal counsel to see whether a Chapter 13 or Chapter 7

bankruptcy might be appropriate to save their home or at least their exempt equity in it.

Lenie Tate is a resident of Massachusetts. She has filed bankruptcy under Chapter 13 of the Code and has declared exemptions in various property including a bank account and a pension.

Robin Showalter is a resident of Pennsylvania who has also filed bankruptcy under Chapter 13 of the Code in order to save her home from foreclosure sale. She has declared exemptions in various property including a small equity in the real estate.

Gloria and Thomas Peebles are residents of Pennsylvania. They have filed bankruptcy under Chapter 7 of the Code and have declared exemptions in

various property including a claim for compensation due to an injury.

SUMMARY OF ARGUMENT

The plain language of the Code and Bankruptcy Rules sets out a scheme for allowing exemptions which is clear and unambiguous. Property included on the debtor's list of exempt property is exempt unless a party in interest timely objects. The procedural rules setting time limits for objections are based on nearly identical rules of civil, criminal and appellate procedure which have been upheld against all challenges.

The Bankruptcy Code contemplates that the debtor's list of exempt property will put the trustee on notice of the debtor's claimed exemptions. The trustee here concedes that he had notice

of the relevant claimed exemption at the time of the meeting of creditors. Nevertheless he failed to file a timely objection. In fact, the trustee took no action to challenge the claimed exemption for more than three years, until after the debtor and her attorneys had expended their own time and money to liquidate the claim.

The debtor adequately listed and described a cause of action as exempt property in her bankruptcy case. She committed no abuse of process. Neither the trustee nor the bankruptcy court has the necessary equitable power to remedy the failure of the trustee and all other parties to make a timely objection.

The thoughtful and well-reasoned decision of the Court of Appeals in this matter should be affirmed.

ARGUMENT

I. THE PLAIN LANGUAGE OF THE BANKRUPTCY CODE AND RULES MANDATES THAT PROPERTY CLAIMED AS EXEMPT IS EXEMPT UNLESS A TIMELY OBJECTION IS RAISED.

A. This Court's Inquiry Need Go No Further Than An Examination of the Text of 11 U.S.C. §522(l) and Bankruptcy Rules 4003(b) and 9006(b)(3).

The issue in this case is whether a court is permitted to disallow a debtor's exemption outside the time scheme set out in the Bankruptcy Code and Rules.[1]

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[1]Although this proceeding is ostensibly a turnover action by the trustee pursuant to 11 U.S.C. §542, all parties apparently agree that turnover must be denied unless a late objection to the debtor's exemption of the asset sought can be allowed. See generally In

Footnote continued on next page

As in all cases of statutory construction, the starting point in this case must be the statutory language. Toibb v. Radloff, 501 U.S. - , 111 S. Ct. 2197, 115 L.Ed.2d 145 (1991); Pennsylvania Department of Public Welfare v. Davenport, 495 U.S. -, 110 S. Ct. 2126, 2130, 109 L.Ed.2d 588 (1990); United States v. Ron Pair Enters., Inc., 489 U.S. 235, 109 S. Ct. 1026, 1030, 103 L.Ed.2d 290 (1989). "The plain meaning of legislation should be conclusive, except in the rare cases [in which] the

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[1]Footnote continued from previous page

re Grossman, 80 B.R. 311 (Bankr. E.D. Pa. 1987)(request for turnover of property claimed as exempt requires determination of whether an objection to the exemption can be allowed).

literal application of a statute will produce a result demonstrably at odds with the intention of the drafters." Ron Pair, 109 S. Ct. at 1031 (quoting Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571, 102 S. Ct. 3245, 73 L.Ed.2d 973 (1982)). "The fact that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning." Union Bank v. Wolas, ___ U.S. ___, 112 S. Ct. 527, 528 (1991).

This is especially true in the bankruptcy context. Congress worked on the formulation of the Bankruptcy Code for nearly a decade. The Code was established to modernize the bankruptcy laws and as a result made major changes

in the substantive laws of bankruptcy. Ron Pair, 109 S. Ct. at 1030. This legislative history bolsters the need to interpret the Bankruptcy Code by its plain language, manifesting Congressional intent. As this Court stated in Ron Pair:

> In such a substantial overhaul of the system, it is not appropriate or realistic to expect Congress to have explained each step it took. Rather, as long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain meaning of the statute.

109 S. Ct. at 1030.

This court has stated a similar dictate requiring adherence to the plain language of properly promulgated court rules. Courts have no authority to tamper with the plain language of Rules

of Court, including limitations periods. Schiavone v. Fortune, 477 U.S. 21, 106 S. Ct. 2379, 91 L.Ed.2d 18 (1986).

In this case, the language of the Code and Rules establish a time frame for objections to exemptions which is absolutely clear. Section 522(1) provides in relevant part:

> The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. ... Unless a party in interest objects, the property claimed as exempt on such list is exempt.

11 U.S.C. §522(1).

The relevant time limitation for objections is then set out in Bankruptcy Rules 4003(b) and 9006(b)(3):

> 4003(b) Objections to Claim of Exemptions. The trustee or any creditor may file

> objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a), or the filing of any amendment to the list or supplemental schedules unless, within such period, further time is granted by the court. * * *
>
> 9006(b)(3) Enlargement Limited. The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.

Fed. R. Bankr. P. 4003(b), 9006(b)(3).

Read together, these provisions create a scheme for determining objections to claimed exemptions which is coherent, uncomplicated and clear. In order to dispute a claimed exemption, a trustee or creditor must object within

30 days after the meeting of creditors or seek more time for objection within that period. Failure to pursue the objection or to seek more time within the statutory period means that the property listed as exempt is exempt.[2]

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[2]This scheme represents a substantial change from prior practice under the Bankruptcy Act. The Act required that the trustee affirmatively set apart the debtor's exemptions. 11 U.S.C. §§6, 47a(6) [repealed]. This requirement was effectuated by former Rule 403(b) which required the trustee to make a report on the debtor's exemptions. The burden was then on the debtor or a creditor to object to the trustee's report within 15 days or to request more time during that period. Bankr. Rule 403(c) [abrogated]. Former Rule 906(b) prevented a court from extending the debtor's time to the trustee's report beyond the 15 day time limit.

This Court has held that when the

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As stated by the 10th Circuit in In re Brayshaw, 912 F.2d 1255, 1257 (10th

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[2]Footnote continued from previous page

plain language of a statute is inconclusive, Congressional intent to overrule prior law will not be inferred without some support in the legislative history. Dewsnup v. Timm, ___ U.S.___, 112 S. Ct. 773 (1992); Kelly v. Robinson, 479 U.S. 36, 107 S. Ct. 353, 93 L.Ed.2d 216 (1986). Because the plain language here is conclusive, the Court need not resort to this principle. However, it is clear in the legislative history that Congress was aware that it was changing prior practice. H.R. Rep. No. 595, 95th Cong., 1st Sess. 363 (1977); Sen Rep. No. 95-989, 95th Cong. 2d Sess. 77 (1978) ("Absent an objection to the list [of exemptions], the property is exempted.")

Moreover, the change in prior practice did not effect an alteration of the Rule requiring objections to exemptions to be made within a strict time frame. See, e.g., In re Levens,

Footnote continued on next page

Cir. 1990),

> There simply is no room in the wording for construing Rule 4003(b) or Rule 9006(b) to permit granting an extension of time to file objections outside the original thirty-day time limit.

See also, e.g., 8 Collier on Bankruptcy ¶4003.04[3] at pp. 4003-13 (15th ed. 1991).

The linchpin of the scheme for determining whether late objections are allowable is Rule 9006(b)(3) because it

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[2]Footnote continued from previous page

563 F.2d 1223 (5th Cir. 1977) (describing prior practice); In re Santoro, 3 B.R. 210 (Bankr. E.D. N.Y. 1980) (enforcing former Rule 906(b) against the debtor's late objection to the trustee's report). The only change was to place the burden on the trustee to object to the debtor's exemptions rather than the other way around.

sets forth the conditions under which a court may properly extend the time for objections to a claimed exemption.

Rule 9006(b) is patterned after Fed. R. Civ. P. 6(b) and Fed. R. App. P. 26(b). Fed. R. Bankr. P. 9006, Advisory Committee Note. See In re Hill, 811 F.2d 484, 487 (9th Cir. 1987). Another analogous Rule is Fed R. Crim. P. 45(b). All four rules limit the authority of courts to enlarge time periods for certain actions.

This Court has been called upon on several prior occasions to uphold and enforce the provisions of such rules. They have been enforced in situations where the consequences of denying relief to untimely parties were harsher than in the proceeding here. In United States

v. Robinson, 361 U.S. 220, 80 S. Ct. 282, 4 L.Ed.2d 259 (1960), for example, indigent criminal defendants were denied their right of appeal based on their failure to timely file a notice and the plain language of Rule 45(b). Similarly, in Torres v. Oakland Scavenger Co., 487 U.S. 312, 108 S. Ct. 2405, 101 L.Ed.2d 285 (1988), the plain language of Rule 26(b) was applied to cut off an appeal by a party not named in a notice of appeal.[3]

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[3]In Torres, Justice Scalia stated the following principles in his concurring opinion:

> By definition all rules of procedure are technicalities; sanctions for failure to comply with them always

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The prototype for both Bankruptcy Rule 9006(b) and Fed. R. Crim. P. 45(b) is Fed R. Civ. P. 6(b). See Fed. R. Bankr. P. 9006 Advisory Committee Notes, Fed. R. Crim. P. 45(b) Advisory Committee Notes. With respect to

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[3]Footnote continued from previous page

> prevents the court from deciding where justice lies in the particular case, on the theory that securing a fair and orderly process enables more justice to be done in the totality of cases. It seems to me moreover, that we should seek to interpret the rules neither liberally or stingily, but only, as best we can, according to their apparent intent. Where the intent is to provide leeway, a permissive construction is the right one; where it is to be strict, a permissive construction is wrong.

Torres, supra, 487 U.S. at 319. These principles apply equally to the Bankruptcy Rules.

Criminal Rule 45(b) this court has stated:

> It has consistently been held that Civil Rule 6(b) was mandatory and jurisdictional and could not be extended regardless of excuse. It must be presumed that the Advisory Committee and the Justices of this Court were aware of the limiting language of Civil Rule 6(b) and of the judicial construction it had received when they prepared and adopted the Federal Rules of Criminal Procedure.

United States v. Robinson, supra, 361 U.S. at 228 (citations omitted). This conclusion applies with equal force to Bankruptcy Rule 9006(b) because it is also based on Fed. R. Civ. P. 6(b).

A decision allowing the trustee's late objection here, in derogation of the plain language of Rule 9006(b), would call into question the interpretation of the several federal

rules on enlargement of time. In addition, such a decision would permit reexamination of decisions on the enforceability of all the various time limitations referenced in Rule 9006(b)(3). This would throw numerous questions of finality in a bankruptcy proceeding into doubt. See, e.g., In re Coastal Alaska Lines, Inc., 920 F.2d 1428 (9th Cir. 1990) (applying Rule 9006(b) to Rule 3002(c) on time limits for filing proof of claim); In re Hill, 811 F.2d 484 (9th Cir. 1987) (applying Rule 9006(b)(3) to Rule 4007(c) on time for filing complaint to determine dischargeability); Neeley v. Murchison, 815 F.2d 345 (5th Cir. 1987) (same). See also In re Ichinose, 946 F.2d 1169 (5th Cir. 1991) (Rule 9006(b)(3) precludes

application of excusable neglect standard to Rule 4007(c)).

B. By describing the property in her schedules and placing it on the list of property declared exempt, the debtor gave sufficient notice of the exemption for the trustee to form a timely objection.

In the formulation of Section 522(l), Congress was quite explicit in stating that absent objections, property on the debtor's list of exemptions is exempt. Section 522(l) contemplates that the act of placing an item of property on the list initiates the process by which trustees and creditors may object and thereby obtain a court determination.

The process contemplated by the statutory scheme is one of notice. The list of exemptions puts the trustee on

notice of the debtor's claim. It starts the process under which a timely objection must be filed. Obviously, a careful trustee must review each and every claim of exemption on the debtor's list.

Here, it is undisputed that the debtor placed the item of property at issue on her list of exemptions at the outset of the case. Jt. Appendix, p. 18. The nature of the property was fully described. There is no suggestion that the debtor here was attempting to conceal property by misdescribing it or leaving it out of her schedules entirely.

It is also clear that there is a good faith basis for an exemption

of the property here under the federal exemption scheme elected by the debtor.[4] Sections 522(d)(11)(D) and (E) allow a debtor to exempt elements of damages for many causes of action.[5] 11 U.S.C. §522(d)(11)(D),(E). Additionally, under Section 522(d)(5) a debtor

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[4]Debtors in Pennsylvania have the option of choosing either federal or state exemptions under Section 522(b). 11 U.S.C. §522(b). The debtor here has chosen the federal exemptions. See Jt. Appendix, pp. 17-18.

[5]Even if the trustee is correct in arguing that these exemptions do not cover the damages which the debtor ultimately recovered in her case against TWA, that does not mean that the claims of exemptions could not have been made four years earlier in good faith. See section I.C. of this brief, infra.

has a "wild card" exemption which applies to property of any description. 11 U.S.C. §522(d)(5). When a debtor does not claim a homestead, as here, that exemption is $4,150.

Placing the property on the list shifts the burden to the trustee and creditors to raise an objection if one is available. That point is underscored in this case, because the trustee's proceeding memo of the Section 341 Meeting of Creditors makes clear that the trustee had actual notice

of the asset in question.[6] Jt. Appendix, p. 26. Thus, at the time the creditors' meeting was held, the trustee had the requisite written notice under Section 522(1), he had actual notice and he had 30 days on which to raise an objection under Rule 4003(b). He simply failed to do so.

This would be a different case if the debtor had misdescribed, misrepresented or concealed the asset so as to deprive the trustee

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[6]It is clear that the trustee must have investigated the asset at the Section 341 meeting or otherwise because his notation in the Proceeding Memo "On Appeal to PA Supreme Court" (Jt. Appendix p. 26) provides information which was not available to him in the debtor's schedules.

of an opportunity to object. See, e.g., Payne v. Wood, 775 F.2d 202, 205 (7th Cir. 1985), cert. denied, 475 U.S. 1085, 106 S. Ct. 1466, 89 L.Ed.2d 722 (1986). However, in this case, the grounds asserted by the trustee in his late objection, i.e., that there is no statutory basis for the exemption and that the claim is insufficiently specific, were equally available for a timely objection.

C. The scheme created by the Code and Rules for determining when objections to exemptions may be allowed is reinforced by the provisions of Section 522(a)(2) and by the procedures the Code contemplates for the administration of property of the estate.

Vindication of the trustee's position in this case would also require the Court to ignore the plain language of Section 522(a)(2) of the Code and the procedures the Code contemplates for administration of property of the estate.

Section 522(a)(2) provides with respect to exemption claims:

> "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

11 U.S.C. §522(a)(2). Section 522(a)(2), like Section 522(1), prevents a trustee from taking a "wait and see" attitude with respect to the exemptions claimed by the debtor. The trustee cannot simply wait several months or years for the debtor to convert various

property to cash and then claim the excess over the exemption.

The value of the property is determined as of the date on which bankruptcy is filed. When the trustee does not administer the property, appreciation of the property based on market forces or the debtor's postpetition improvements must accrue to the benefit of the debtor. With respect to a chose in action like the one exempted by the debtor here, the value of the claim as of the date of filing necessarily reflects its contingent and unliquidated nature. See Crossley v. Lieberman, 90 B.R. 682, 698 (E.D. Pa. 1988) aff'd. on other gds., 868 F.2d 566 (3rd Cir. 1989).

It is up to the trustee to evaluate the chose in action in a timely fashion and, if it has value to the estate, to administer it for the benefit of creditors. If the trustee believes that the value of the claim exceeds the debtor's exempted interest, an objection to the exemption must be timely filed. Once an exemption is allowed by operation of law pursuant to Section 522(l), the debtor is entitled to rely on that occurrence and to treat the exempt interest as if it had not been divested. See, e.g., Wissman v. Pittsburgh National Bank, 942 F.2d 867 (4th Cir. 1991) (once property is exempted debtor may pursue recovery of exempt interest).

If the exemption is either not claimed or disallowed, the property is not exempt and the trustee has the right to administer the property for the benefit of creditors and ultimately to liquidate it to pay claims against the estate. See 11 U.S.C. §§541, 704. However, the trustee must bear the costs of that administration, including any legal fees incurred. 11 U.S.C. §§704(1) and 327(a). See Ohio v. Kovacs, 469 U.S. 274, 284 n.12, 105 S. Ct. 705, 83 L.Ed.2d 649 (1985) (trustee is "charged with the duty of collecting ... non-exempt property and administering it"). It flies in the face of the scheme set out by

the Code to allow a trustee to lie in wait for months or years after property has been claimed as exempt (while, for example, the debtor pays attorneys and otherwise expends monies to liquidate the property), and then to allow the trustee to seize the proceeds because the value of the property has increased during the intervening time.[7]

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[7]A similar situation arises when a debtor claims a homestead exemption covering all of his equity in his home. If the trustee fails to object, that debtor is entitled to rely on the failure to object to conclude that the home will not be liquidated by the trustee. He then might go ahead and undertake repairs. Because of Section

Footnote continued on next page

The trustee's position requires him to make decisions about which assets have sufficient value so that the estate would benefit from their liquidation. Part of that process requires the trustee to evaluate the debtor's claim of an exempt interest in that property and to challenge it if it

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[7]Footnote continued from previous page

522(a)(2), inter alia, the trustee would not be entitled to the increase in value to the home resulting from the postpetition repairs.

Similarly, by failing to file an objection, the trustee here lulled the debtor and her attorneys into doing postpetition work which increased the value of the relevant property from a contingent and unliquidated asset of little value into full-blown proceeds of a legal claim.

can be disallowed. The scheme established by the Code and Rules require that the trustee make decisions about challenging the exemptions in a timely fashion.[8]

D. The Power Granted Under Section 105(a) Can Not Be Used to Override Time Limitations in the Code and Rules.

The trustee argues that Section 522(l) and the specific time limitations contained in the Rules are somehow

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[8]Although there is no reason for the Court to speculate about the trustee's motive in failing to object, there is a strong appearance here that the trustee simply doubted that the asset had significant value. Although he apparently followed the progress of the case from afar, he did nothing to intervene until the asset was liquidated.

overcome by the more general provisions of Section 105. That argument has no merit.

Section 105(a) provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. §105(a).

Petitioner's argument is based on the notion that a bankruptcy court has statutory power under Section 105 to do equity. Even assuming that allowing late objections would, in fact, be equitable, Section 105 does not grant

the necessary power to do equity in derogation of other provisions of the Code and Rules. In re Ionosphere Clubs, Inc., 922 F.2d 984, 995 (2d Cir. 1990) cert denied 112 S. Ct. 50 (1991).

As this court has noted, "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code". Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206, 108 S. Ct. 963, 99 L.Ed.2d 169, 179 (1988).

There is no equitable power under Section 105 to ignore more specific provisions of the Bankruptcy Code. In re Ionosphere Clubs, Inc., supra; In re Sutton, 786 F.2d 1305 (5th Cir. 1986) ("the powers granted by [Section 105(a)]

may be exercised only in a manner consistent with the provisions of the Bankruptcy Code"). See also In re Continental Airlines, 907 F.2d 1500, 1509 (5th Cir. 1990) (Section 105(a) "does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity."). Similarly, Section 105(a) is not a grant of authority to rewrite specific time limitations contained in the Rules. In re Coastal Alaska Lines, Inc., 920 F.2d 1428 (9th Cir. 1990). See also Torres v. Oakland Scavenger Co., 487 U.S. 312, 108 S. Ct. 2405, 101 L.Ed.2d 285 (1988) (the court of appeals has no equitable authority to override specific time

limitations contained in the Appellate Rules).

There is little in the trustee's brief to indicate what limits he would apply to a judge's equitable powers under Section 105(a). The trustee appears to assume that the debtor's conduct here is clearly remediable under Section 105(a) as "abuse of process". The trustee would ignore the fact that abuse of process has long been given meaning in our legal system as a term of art. See 1 Am. Jur. 2d "Abuse of Process" §1.[9] See also, e.g., In re

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[9]Am. Jur. defines abuse of process as the "malicious misuse or misapplication of [legal] process to accomplish some purpose not warranted or commanded by the writ." 1 Am. Jur. 2d "Abuse of Process" §1.

Captran Creditors Trust, 116 B.R. 845, 853 (Bankr. M.D. Fla. 1990) (defining abuse of process).[10]

Traditional notions of abuse of process always require some element of malice. The debtor's conduct here at most arises to failure to carefully specify her exemption. Although she and her attorney might have been more careful, nothing that they did even arguably rises to the level of abuse of process.

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[10]The trustee's brief at 25-26 accurately describes the applicable legislative history as sparse. The history of the amendment cited does little to delineate the limits that Congress would place on the term abuse of process. Nor does it significantly support the trustee's position.

II. THE POLICY CONCERNS RAISED BY THE PETITIONER AND WHICH FORMED THE BASIS OF THE DECISIONS BY THE BANKRUPTCY AND DISTRICT COURTS ARE IRRELEVANT AND GROUNDLESS.

A. Because the Language of the Code and Rules is Plain, Policy Concerns Have No Place in the Resolution of the Issue Before the Court.

As discussed above, resolution of this matter is controlled by the plain language of the Code and Rules. Since the scheme for objecting to exemptions is clear, there is no need to turn to Congressional intent, much less to vague notions of policy.

The bankruptcy and district courts which ruled in this case chose to ignore the plain language of the Code and Rules. They did so based on vague notions of policy.

The bankruptcy court, for example, stated that requiring a trustee to object to all unwarranted claims of exemption "would encourage certain debtors of questionable integrity to claim all of their property as exempt, thereby leaving it to the trustee and creditors to challenge such claims." It concluded without citation to the legislative record, "... this surely would not be the congressional intent". In re Davis, 105 B.R. 288, 293 (Bankr. W.D. Pa. 1989) aff'd 118 B.R. 272 (W.D. Pa. 1990).

Not only does this reasoning overlook the ease with which a trustee could object to an unfounded claim of objection, but

also it flies in the face of any accepted notion of statutory interpretation. Since there is no ambiguity in the scheme created by the Code and Rules, there is no need to look to Congressional intent, let alone to speculate on policy concerns without basis in the legislative record. Toibb v. Radloff, supra.

Similarly, the other cases relied on in support of the petitioner's position do not analyze the language of the Code and Rules, but rather turn precipitously to notions of policy. The three courts of appeals which have purportedly adopted petitioner's position, have

stated that there must be a good faith statutory basis for a claim of exemption as a prerequisite for enforcing Rules 4003(b) and 9006(b)(3).[11] They would effectively rewrite Section 522(l) to read "[u]nless a party in interest objects, the property properly claimed as exempt on such list is exempt." There is nothing in the language of the Code or Rules which would support this departure from the language of the statute.

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[11] In re Peterson, 920 F.2d 1389 (8th Cir. 1990); In re Sherk, 918 F.2d 1170 (5th Cir. 1990); In re Dembs, 757 F.2d 777 (6th Cir. 1985). It should be recognized that the relevant portions of the Peterson and Dembs decisions are dicta.

B. Concerns About "Exemption By Declaration" Are Groundless.

The lower courts which ruled in this case and several other courts which have decided this issue have based their decision on concerns about "exemption by declaration". Presumably, these courts fear that if the time limitations contained in the Rules are enforced, bad faith debtors will run rampant declaring exemptions which they know have no basis.

These courts ignore three important controls on bad faith debtor behavior. First and most simply, diligent trustees will object to groundless exemptions. The more groundless the exemption, the easier the trustee's objection will be. The trustee only needs to fill out a form objection stating that the exemption has no basis in the Code and

to do so within the time limits set out by the Rules. If the exemption actually has no basis, then the objection will certainly be allowed.[12]

Second, bad faith claims of exemption are sanctionable under Bankruptcy Rule 9011. Contrary to the position stated by the petitioners in

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[12]In the case at bar, the trustee could have objected on the basis that there was no statutory grounds for the exemption or based on a concern that the manner of claiming the exemption was insufficiently definite. The trustee chose to do neither, presumably because he believed that the property right at issue had little value.

As a practical matter, trustees are appointed based on their familiarity with the Bankruptcy Code and bankruptcy practice. The notion that the trustee may be unwary or the victim of an unduly complicated statutory scheme should evoke little sympathy.

their brief, the first sentence of Rule 9011 merely states that the debtor's schedules need not be signed by the debtor's attorney. They must, however, be signed by the debtor. Fed. R. Bankr. P. 1008. The debtor is liable under Rule 9011 for improperly claimed exemptions including exemptions claimed with no basis in law or fact.[13] See 9 Collier on Bankruptcy, ¶9011.03 (15th ed. 1991).

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[13]To the extent that Rule 9011 is inapplicable to attorneys with regard to a debtor's bankruptcy schedules, important ethical considerations nevertheless preclude bad faith attorney behavior. Disciplinary Rule 7-102(A)(5) of the Canons of Ethics, for example, precludes a lawyer from knowingly making a false statement of law or fact to a court. See also DR 7-102(A)(2), (3), (7). Similarly, Rule of Professional Conduct 3.3(a)(1) precludes a lawyer from knowingly making "a false statement

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Finally, deliberate efforts to mislead the court and/or hide the true value of property can give rise to criminal sanctions. Each of the debtor's ~~schedule~~s is signed subject to the penalty for perjury. Fed R. Bankr. P. 1008. See Official Bankruptcy Form 6. Deliberate attempts to mislead the trustee and the court can give rise to a prosecution for perjury. Moreover, Section 152 of Title 18 defines

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[13]Footnote continued from previous page

of material fact or law to a tribunal." See also RPC 3.3(a)(2), (5); 4.1(a)(1), (2).

The idea that attorneys would engage in wholesale declaration of frivolous exemptions merely because Rule 9011 only arguably applies to them is somewhat ludicrous.

bankruptcy crimes and includes knowing or fraudulent concealment of property and false oaths. 18 U.S.C. §152. See, e.g., U.S. v. Tatum, 943 F.2d 370 (4th Cir. 1991) (discharge no bar to subsequent criminal prosecution for concealing assets from the trustee).

In summary, in order for a debtor to get the benefit of an exemption, a debtor must list the relevant property as exempt. It then becomes the trustee's obligation to review the claimed exemptions and to timely object to those which have no basis or if they disagree about value. Bad faith debtors run the risk of a trustee's objection as well as civil and criminal penalties.

III. THE POLICY CONCERNS FAVORING THE DEBTOR'S POSITION ARE EQUAL TO, IF NOT WEIGHTIER THAN THOSE FAVORING THE TRUSTEE AND THEY FIND GREATER SUPPORT IN THE LEGISLATIVE HISTORY.

A debtor who declares exemptions and subjects them to scrutiny by the trustee and creditors is entitled to rely on their failure to object as well as on the finality of her discharge in allowing her a fresh start. Moreover, the finality contemplated by enforcement of the time limits in the Rules is crucial to bankruptcy administration for all consumer debtors.

The key policy concern militating in favor of a strict deadline for objections to exemptions is the need for finality in the bankruptcy process. Taylor v. Freeland & Kronz, 938 F.2d

420, 425 (3rd Cir. 1991); In re Grossman, 80 B.R. 311, 315 (Bankr. E.D. Pa. 1987) (deadline for objections and finalizing of exemptions if no objection is made "serves the necessary purpose of establishing a date on which the rights of various parties can be fixed").

This Court has stated,

> the chief purpose of the bankruptcy laws is "to secure a prompt and effectual administration of the estate of all bankrupts within a limited period."

Katchen v. Landy, 382 U.S. 323, 328-329, 86 S. Ct. 467, 472, 15 L.Ed.2d 391 (1966) quoting Ex Parte Christy, 3 How. 292, 312, 44 U.S. 292, 11 L.Ed. 603 (1845).

Finality is important both from the standpoint of the debtor in obtaining a fresh start and from an administrative perspective.

The strict enforcement of a deadline for objections to exemptions is essential to the debtor in making decisions about the use and disposition of exempt property. Presumably, here, the debtor and her lawyers would never have invested significant time and money into litigating this claim, if the trustee had seasonably challenged her exemption. The trustee would have had the obligation to make the necessary expenditures to liquidate the claim.

Congress was concerned that once a debtor completes a case, he or she obtain the benefit of a "fresh start". See, e.g., H.R. Rep. No. 595, 95th Cong., 1st.

Sess. 117 (1977) (fresh start is the "essence of modern bankruptcy law"); H.R. Rep. No. 595, 95th Cong., 1st Sess. 125 (1977) (purpose of straight bankruptcy... is to obtain a fresh start"); H.R. Rep. No. 595, 95th Cong. 1st Sess. 118 (1977) (Chapter 13 designed to ensure "the debtor is given adequate exemptions and other protections to ensure that bankruptcy will provide a fresh start") and Id. at 118 (whether debtor uses Chapter 7 or 13, "bankruptcy relief should be effective, and should provide the debtor with a fresh start.")

This Court has frequently echoed the same concern under both the Act and the Code:

> This Court has certainly acknowledged that a central purpose of the Code is to provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy "a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." Local Loan Co. v. Hunt, 292 U.S. 234, 244, 54 S. Ct. 695, 699, 78 L.Ed. 1230 (1934).

Grogan v Garner, ___ U.S. ___, 111 S. Ct. 654, 659, 112 L.Ed.2d 755 (1991). Consistent with this goal of giving the debtor a fresh start, Congress has provided "for the exemption of certain property which would otherwise be distributed to unsecured creditors." Augustine v. United States, 675 F.2d 582, 584 (3rd Cir. 1982).

Obviously challenges to exemptions which arise as late at the one here would allow trustees to act in deus ex machina fashion to interfere with a debtor's fresh start. Such an outcome would frustrate a major objective of the Code.

The Federal Bankruptcy Rules themselves provide another reason to support debtor's position. Rule 1001 states: "[t]hese rules shall be construed to secure the just, speedy and inexpensive determination of every case and proceeding." Fed. R. Bankr. P. 1001. Citing this Court's opinion in Katchen v. Landy, 382 U.S. 323, 328, 86 S. Ct. 467, 472, 15 L.Ed.2d

391 (1966), the Advisory Committee Note goes on to say "[t]he objective of 'expeditious and economical administration' of cases under the Code has frequently been recognized by the courts to be 'a chief purpose of the bankruptcy laws.'" Fed. R. Bankr. P. 1001, Advisory Committee Note. To this end, enforcement of the provisions of Rule 9006(b)(3) are necessary to ensure "sound administration of the [bankruptcy] case". Fed. R. Bankr. P. 9006, Advisory Committee Note. The Advisory Note to prior Rule 906(b) is even more explicit in stating that enforcement of the Rules's express limitations on certain extensions of time is

designed to eliminate "disproportionate costs and delay to bankruptcy administration".[14]

A decision in favor of the trustee's position in this case would also have profound negative impact on the administration of reorganization cases. Under both Chapter 11 and 13, a plan may not be confirmed unless creditors are receiving at least what they would receive if the estate were being liquidated. 11 U.S.C. §§1129(a)(7)(A)(ii); 1325(a)(4). In the case of an individual debtor, it is impossible to determine the

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[14] See Footnote 2, supra.

liquidation value of the estate without determining the amount of the debtor's allowed exemptions. Allowing the trustee and creditors to bring late objections to a debtor's exemptions could thus wreak havoc on the finality of reorganization plans.

CONCLUSION

For all the reasons set forth above, the thoughtful and well-reasoned decision of the Third Circuit Court of Appeals in this matter should be affirmed.

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